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# IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT

# **DIVISION TWO**

NANCY PROUD et al.,

Plaintiffs and Respondents,

E047653

v.

(Super.Ct.No. SICVCV743239)

GERALD R. PROUD,

**OPINION** 

Defendant and Appellant.

APPEAL from the Superior Court of Inyo County. Harold F. Bradford, Judge.

(Retired judge of the Alpine Super. Ct. assigned by the Chief Justice pursuant to art. VI,

§ 6 of the Cal. Const.) Affirmed in part and reversed in part.

Hardy & Place and Thomas L. Hardy for Defendant and Appellant.

Law Offices of Frederick G. Wood and Frederick G. Wood for Plaintiffs and Respondents.

This is a dispute between adult siblings over three adjacent parcels of property in the Owens Valley. A deceased sibling, Virginia Proud, held record title to all three

parcels (or their proceeds) when she died. She left all of her property to defendant Gerald Proud. Plaintiff Joyce Proud Knox, however, testified that Virginia had promised her that two of these parcels would go into a trust, for the use and benefit of members of the Proud family for generations to come. Joyce also testified that the third parcel was rightfully hers; it had been placed in Virginia's name only temporarily, for convenience.

The trial court, after a bench trial, ordered Gerald to convey the first two parcels (or their proceeds) into a trust. It further awarded the proceeds of the third parcel to Joyce.

Gerald challenges Joyce's credibility. The trial court, however, determined all credibility issues in favor of Joyce and against Gerald, and we must accept that determination.

Gerald also argues, however, that the trial court erred by granting specific performance of the asserted agreement regarding the first two parcels, because this agreement was not just and reasonable, was not for adequate consideration, and was not sufficiently definite. We agree. Even when Joyce's testimony is accepted, the consideration for the agreement, as she described it, was not adequate; moreover, the intended trust, as she described it, was too indefinite to be enforced.

Finally, Gerald also argues that Joyce was not entitled to the proceeds of the third parcel, because she had unclean hands, because the statute of limitations had run, and because she failed to file a creditor's claim with Virginia's estate. We disagree.

Accordingly, we will reverse the judgment as to the first two parcels. However, we will

affirm the judgment as to the third parcel (with a minor modification made necessary by our partial reversal).

I

### FACTUAL BACKGROUND

# A. The Proud Family.

Lee and Mildred Proud were known in their family as "Pa" and "Mim." They had eight children, including Gerald, Joyce, Virginia, Dorothy, and Lee, Jr. (known as "David").

They also had a number of grandchildren, including David's two sons — Lee III (known as "Lee Dave"), and Wesley (known as "Wes").

# B. 2200 Sage Flat Road.

In 1965, a six-acre piece of then-vacant land at 2200 Sage Flat Road was conveyed to Virginia and Dorothy (along with Dorothy's husband).

At the time, Joyce was living in Indiana. According to Joyce, she had a phone call with Virginia in which it was agreed that the three sisters — Joyce, Virginia, and Dorothy — would buy the property together.

The next day, in another phone call between Joyce and Virginia, it was agreed "[t]hat the three sisters would have the property, and if one would pass away, it would go to the other two, and if the other one passed away, it would go to the survivor." The last surviving sister would place the property in a trust for the Proud family. "For generations to come it would be owned by Prouds."

Their plan was that initially their parents would build a house on the property and would live there. Eventually, however, three houses would be built, one for each of the three sisters.

The total purchase price was \$3,000; Joyce sent Virginia a check for \$500 or \$600 of this, and Virginia and Dorothy paid the rest.

This agreement was never put in writing. Gerald was unaware of it. David's son, Wes, however, testified that both Virginia and Joyce told him that Joyce was a part owner of the property.

Pa and Mim did indeed come to live on the property. When they first arrived, they lived in a small trailer. Between 1967 and 1975, however, a house and a shop were built on the property. Pa paid for and carried out most of the construction work himself, but other family members, including David and his sons, did some of it. David also paid some of the construction costs — some \$300 to \$500 toward the house and \$250 or \$300 toward the shop.

David and his son Lee Dave both understood that the property belonged to the family. David's other son, Wes, likewise understood that the property belonged to "everybody" because they had "worked on [it], established [it], paid for [it and] been a part of [it]."

Joyce was not asked to contribute to the cost of the construction, and she did not. However, in 1966, she paid \$500 toward the cost of drilling a well on the property, which was about half the total cost. Joyce testified that when property taxes were due, Virginia would tell her what her share was, and she would send Virginia a check.<sup>1</sup>

At some point, Pa staked out a portion of the property for a house for Joyce.

However, that house, as well as the planned houses for Virginia and Dorothy, was never built.<sup>2</sup>

Dorothy did not leave a will. In 1971, however, during her final illness, she (and her husband) quitclaimed the property to Virginia. Dorothy died in 1972.

In 1984 or 1985, when Virginia retired, she moved in with Pa and Mim. Pa died in 1986. Mim died in 1999, leaving Virginia the sole occupant of the property and the sole owner of record.

# C. 2260 Sage Flat Road.

In 1975, Virginia purchased a 10-acre piece of property at 2260 Sage Flat Road, immediately adjacent to 2200 Sage Flat Road. Around 1976, Joyce and her husband Ken Knox moved into a mobile home on this property.

According to Joyce, Virginia asked her to take care of Pa and Mim, to take care of the house and land, and to make all repairs. In exchange, she promised that Joyce could live on 2260 Sage Flat, rent-free, all her life. Virginia also promised that, after she and

No such checks were introduced at trial.

After 1976, when Joyce started living in a mobile home at 2260 Sage Flat Road (see part I.C, *post*), she saw no need to build a house on 2200 Sage Flat.

Joyce died, 2260 Sage Flat would be combined with 2200 Sage Flat and put into the same trust, so that "[i]t would always belong to the Prouds."

Joyce and Ken used 2260 Sage Flat for their sheep-raising business. They maintained both 2200 and 2260 Sage Flat, painting the house, repairing the mobile home, and planting trees. When Mim needed care, Joyce was her primary caregiver.

### D. Knox Acres.

In 1977, a 10-acre piece of vacant land immediately adjacent to 2260 Sage Flat Road was conveyed to John and Marian Knox. John was the brother of Joyce's husband Ken — i.e., John and Marian were Joyce's brother- and sister-in-law. They lived in Illinois.

This property was known in the family as Knox Acres. According to Joyce, she and her husband Ken were the true owners of the property. It was paid for out of the income from a family farm in Illinois, in which her husband and his brothers had an interest. Joyce understood that only she and her husband were purchasing the property; he paid for it with a check for \$15,000. Initially, they did not pay any property taxes. They thought that the tax bills were being sent to the family farm, and the taxes were being paid out of Ken's share of the farm income. After about seven years, however, John Knox told Ken, "I've got some tax bills here. . . . I don't know what to do with them." Ken immediately paid the back taxes. After that, the tax bills were sent to him and Joyce, and they paid them.

David's sons, Lee Dave and Wes, both understood from "conversations with family members" that Joyce and Ken owned Knox Acres.

In September 2001, Joyce decided to sell Knox Acres. At that point, Ken was suffering from Alzheimer's disease. She was going to use part of the proceeds to build a garage on 2200 Sage Flat. She and Virginia were going to use the rest to travel together. Lee Dave confirmed that Joyce told him the money from the sale would be used to build a garage, and the rest would be "money for their old age." Ken died in October 2001.

Joyce listed the property for sale through realtor Marlene Cierniak. Virginia accompanied her to her meeting with Cierniak. According to Cierniak, both Virginia and Joyce said that Joyce was the owner of the property and should get the proceeds of the sale. However, they also said that they wanted the property put in Virginia's name first.

Cierniak did not really remember why they wanted to put the property in Virginia's name. She vaguely thought that the income from the property might have prevented Joyce from receiving Social Security disability payments. On the other hand, the reason may have been because Joyce's deceased husband "had a lot of medical bills or something." Cierniak did remember Virginia saying that, if anything happened to her, she "was going to make sure that Joyce was taken care of."

Joyce testified that the property was put in Virginia's name because, at the time, the only bank account that she had was held jointly in the name of her deceased husband, Ken. Because Ken had had Alzheimer's, she was afraid that he might have debts that she did not know about; she wanted to protect the proceeds from Ken's creditors.

When Cierniak obtained a preliminary title report, she discovered that the property was actually held in the names of John and Marian Knox. She contacted Marian, who confirmed that Joyce was the true owner. Marian then deeded the property, not to Joyce, but to Virginia.<sup>3</sup>

In June 2002, the property was sold for a total of \$49,000. The proceeds went to Virginia, who deposited them in a bank account that she held in joint tenancy with Gerald. Ten or twelve thousand dollars was in fact used to build the garage. When Virginia offered to give the remainder to Joyce, Joyce told her to wait until after the capital gains taxes were paid. However, Virginia died before the capital gains taxes came due. After Virginia's death, Gerald did in fact pay the capital gains tax, totaling about \$6,000, out of the proceeds.

# E. Virginia's Death and Its Aftermath.

Virginia died on February 21, 2003. She left a will, which she had signed in 2000. Under it, Gerald was her sole beneficiary.

Within a day or so after Virginia's death, Gerald reviewed her will with other family members, including Joyce and Wes. He said, "Everything is mine," including

As noted, Cierniak testified that when Joyce originally listed the property with her, she already wanted the property to be put in Virginia's name before it was sold.

Joyce, on the other hand, indicated that this idea did not come up until Cierniak discovered the problem with the title. At first, she implied it was Cierniak who suggested putting the property in Virginia's name. Ultimately, however, she conceded that Cierniak's only contribution was to suggest that, instead of Marian conveying the property to Joyce and then Joyce conveying it to Virginia, Marian should convey it directly to Virginia.

2200 and 2260 Sage Flat Road. According to Joyce, she protested, asking "What about my acres on 2200?," but Gerald just shrugged his shoulders.

Gerald also said, however, that "there would be no changes." He indicated that the family could continue to use 2200 and 2260 Sage Flat, and Joyce could continue to live there.

Gerald was also Virginia's executor. He filed a probate proceeding, in which 2200 and 2260 Sage Flat were ultimately confirmed to him.

In December 2004, Joyce moved to Illinois. She claimed that Gerald had told her that he was going to sell 2260 Sage Flat. She told family members that she did not want to move, but she was afraid he was going to make her leave on short notice. "He stressed her out to the point [that] she had to get out of there."

In May 2006, Gerald sold 2260 Sage Flat for \$145,000.<sup>4</sup> The net proceeds, after payment of escrow costs, were about \$124,000. Gerald used \$105,000 of this to pay off the mortgage on and to make some improvements to his house in Idaho.

In January 2007, Gerald listed 2200 Sage Flat for sale. In February 2007, however, plaintiffs filed this action. The trial court issued a preliminary injunction against the sale.

The documentary evidence reflected a selling price of \$145,000. Gerald testified, however, that the buyer discovered that the well would have to be replaced, so they agreed to reduce the selling price by \$5,000.

II

### PROCEDURAL BACKGROUND

The original plaintiffs in this action were Joyce, David, and Lee Dave. While the action was pending, David died, and his wife Nancy was substituted as his successor. Plaintiffs filed this action in 2007, asserting four causes of action, for (1) quasi-specific performance of a contract to make a will; (2) a resulting trust; (3) a constructive trust; and (4) breach of contract.

After a bench trial, the trial court rendered a statement of decision, as follows.

With regard to 2200 Sage Flat, it found that, in 1965, Virginia, Joyce, and Dorothy entered into an enforceable oral agreement to buy the property; to have it pass, upon the death of each, to the survivor or survivors; and, upon the death of the last survivor, to have it pass to the Proud family for the use and benefit of future generations.

With regard to 2260 Sage Flat, it found that Virginia and Joyce entered into an enforceable oral agreement to treat the property in accordance with their preexisting agreement regarding 2200 Sage Flat.

With regard to Knox Acres, it found that Joyce had entrusted the property and its proceeds to Virginia, for her (Joyce's) own use and benefit.

Finally, it found that Virginia had breached these agreements by leaving her entire estate to Gerald.

The trial court imposed what it described as a constructive trust over (1) 2200 Sage Flat, (2) the proceeds of the sale of 2260 Sage Flat, and (3) Gerald's house in Idaho, to

the extent that the proceeds of the sale of 2260 Sage Flat had been invested in it. It then ordered that all three of these items be placed in an express trust. As trustees, it named plaintiffs; as beneficiaries, it named "all of [Pa and Mim's] known living descendants . . . ." It specifically ordered Gerald to convey his Idaho house to plaintiffs, free of liens.

It imposed what it described as a constructive trust and also as a resulting trust over the proceeds of Knox Acres. It allowed Gerald to deduct the amount spent to build a garage on 2200 Sage Flat. It also allowed him to deduct any "expenses incurred for the improvement, preservation or benefit of 2200 Sage Flat Road and/or 2260 Sage Flat Road." It awarded the remainder to Joyce.

The trial court ordered Gerald to pay to plaintiffs the proceeds of the sale of 2260 Sage Flat, "in the sum of \$145,000." It also ordered him to pay to Joyce the remaining proceeds of Knox Acres. It added that, if and when he paid both amounts "in their entirety," he would be entitled to recover his Idaho house from the trust.

The trial court then entered judgment accordingly. Gerald filed a timely notice of appeal.

III

# 2200 AND 2260 SAGE FLAT

Regarding 2200 and 2260 Sage Flat, Gerald contends that there was insufficient evidence of an agreement meeting the requirements for specific performance. He argues

that the agreement shown by the evidence was not sufficiently definite, not just and reasonable, and not supported by adequate consideration.

"Where findings of fact are challenged on a civil appeal, we are bound by the "elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . . ' [Citation.]" (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

Gerald challenges the sufficiency of the evidence on several grounds. First, he argues that Joyce's testimony was not credible. However, "[i]t is well established that ""[t]he testimony of a [single] witness . . . may be sufficient' [to support a judgment]." [Citations.]" (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1075.) "[N]either conflicts in the evidence nor "testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." [Citations.] Testimony may be rejected only when it is inherently improbable or incredible, i.e., "unbelievable *per se*," physically impossible or "wholly unacceptable to reasonable minds." [Citation.]" (*Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 1150, 1155.)

Gerald notes that, according to Joyce, she entered into the agreement regarding 2200 Sage Flat in a single telephone conversation with Virginia. He claims it is "unlikely that any detailed discussions regarding testamentary planning could have been had in the course of one telephone call." We do not know how long the phone call lasted, however, and the discussions to which Joyce testified were not particularly detailed. In any event, this scenario is not physically impossible. Gerald also argues that Joyce could not have entered into an agreement with both Virginia and Dorothy because Dorothy was not a participant in the phone call. Virginia, however, could have been acting as Dorothy's agent; alternatively, Dorothy could have ratified the agreement later.

Next, Gerald argues that Virginia's conduct (i.e., holding all three properties in her own name and leaving them to Gerald) was inconsistent with the alleged agreement.

Although the trial court *could have* relied on this as a reason for finding that Joyce's testimony was not true, it was not *required* to do so. The trial court reasoned that the sisters were "not sophisticated or knowledgeable" about legal matters. Moreover, it is inferable that Virginia relied on Gerald to see that her wishes were carried out.

Finally, Gerald argues that it does not make sense that Joyce paid only one-sixth of the purchase price and none of the construction costs, yet received a one-third interest in the property. It is not impossible or incredible, however, that a group of family members would let another family member buy into such an arrangement for less than her fair share.

This raises, however, a related point. Gerald also argues that the asserted agreement was not just, reasonable, and for an adequate consideration. We agree.

"To obtain specific performance after a breach of contract, a plaintiff must generally show: '(1) the inadequacy of his legal remedy; (2) an underlying contract that is both reasonable and supported by adequate consideration; (3) the existence of a mutuality of remedies; (4) contractual terms which are sufficiently definite to enable the court to know what it is to enforce; and (5) a substantial similarity of the requested performance to that promised in the contract. [Citations.]' [Citations.]" (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 472.)

Even assuming that the contract at issue is a contract to make a will, the same principles apply. "Since the making of a will cannot be compelled, there can be no specific performance of such a contract in the strict sense, but under certain circumstances equity will give relief equivalent to specific performance by impressing a constructive trust upon the property which decedent had promised to leave to plaintiff. [Citations.]" (*Ludwicki v. Guerin* (1961) 57 Cal.2d 127, 130.) "An action of th[is] type. . . has been called one for quasi-specific performance . . . . [Citation.]" (*Ibid.*)

"Although the relief in a 'quasispecific performance' action differs from that in the traditional specific performance action the requisites for relief are identical. . . . The plaintiff must show that his remedy at law is inadequate; the contract must be just and reasonable and must be supported by adequate consideration; there must be a mutuality of remedies . . . ; the terms of the contract must be sufficiently definite for the court to know

what to enforce; and the performance which the court is asked to compel must be substantially identical to that promised in the contract. [Citations.]" (*Henderson v. Fisher* (1965) 236 Cal.App.2d 468, 473, fn. omitted.)

"The requirement of an adequate consideration in an action for specific performance does not mean that the contract price shall measure up to the highest market value of the property, but merely that it shall be a substantially just and fair valuation under all the circumstances of the case.' [Citation.]" (*Dennis v. Overholtzer* (1960) 178 Cal.App.2d 766, 777-778, disapproved on other grounds in *Ellis v. Mihelis* (1963) 60 Cal.2d 206, 221.) For example, in *Loeb v. Wilson* (1967) 253 Cal.App.2d 383, the appellate court sustained a finding that the consideration for a transaction was not adequate where a piece of property with a fair market value of \$99,000 was sold for \$65,000. (*Id.* at pp. 387-388.) "A trial court's finding the consideration was adequate will not be disturbed on appeal if it is supported by substantial evidence. [Citation.]" (*Cubic Corp. v. Marty* (1986) 185 Cal.App.3d 438, 448.)

Here, as already noted, Joyce did not pay her fair share of the purchase price of 2200 Sage Flat. Moreover, it appears that, aside from paying an (unspecified) share of the property taxes, she had no particular obligation to contribute to its upkeep, maintenance, or improvement. While she did "little things" to help out with the construction of the house and shop, she admitted that this was not part of the consideration for the asserted agreement; "[i]t was no more than what you would normally do for your parents."

Similarly, other family members contributed money and labor toward the construction of the house and the shop. However, this was not part of the bargained-for consideration for the asserted agreement. These other family members were not parties to the agreement between Virginia, Joyce, and Dorothy; they were, at most, intended beneficiaries. They had no contractual obligation to help out with the construction.

The inadequacy of consideration became even more marked when 2260 Sage Flat was added to the agreement. Joyce did not contribute any money to the purchase of 2260 Sage Flat. She merely promised to maintain the property and to take care of Pa and Mim.<sup>5</sup> In return, however, Virginia agreed not only to extend the existing agreement to 2260 Sage Flat, but also to let Joyce live on 2260 Sage Flat, rent-free, as long as she lived. Joyce and Ken even used 2260 Sage Flat in their sheep-raising business. Their use and occupancy of 2260 Sage Flat was more than ample consideration. We therefore conclude that there was no substantial evidence that the asserted agreement regarding 2200 and 2260 Sage Flat was just and reasonable and supported by adequate consideration.

The trial court found that, as part of the consideration for including 2260 Sage Flat in the existing agreement, Joyce "t[ook] care of and provid[ed] companionship and assistance to Virginia . . . ." Certainly there was evidence that Joyce and Virginia went everywhere together; there was also evidence that after Virginia suffered some sort of head wound, Joyce took care of it, changing her dressings twice a day. Nevertheless, the evidence showed that Virginia did not bargain for any care and companionship for herself, only for Pa and Mim. Joyce's care and companionship for Virginia was gratuitous.

Gerald also argues that the agreement was indefinite, particularly about what would happen to the property after the death of the last surviving sister. Once again, we agree.

"The equitable remedy of specific performance cannot be granted if the terms of a contract are not certain enough for the court to know what to enforce. [Citations.] However, ""[t]he law does not favor but leans against the destruction of contracts because of uncertainty; and it will, if feasible, so construe agreements as to carry into effect the reasonable intentions of the parties if [they] can be ascertained . . . . "" [Citations.]" (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349.)

Here, Joyce testified: "We wanted to put it in a trust so that all the family would contribute to the upkeep of the property so that for generations to come . . . it would still be the Proud six acres, that nobody would sell it to another party." But how was the trust going to be funded? Ownership of real property entails certain expenses, most notably for property taxes and for maintenance. Joyce had a happy vision of all of the family members "contribut[ing] to the upkeep of the property," but that is simply not how a trust works. And if some family members could not or did not contribute, how would they be compelled to do so?

The trial court managed to evade this problem because, by the time it entered judgment, 2260 Sage Flat had been sold. Thus, it ordered that 2200 Sage Flat and the *proceeds* of 2260 Sage Flat be conveyed to a trust. The trust that it set up, however, was not the trust that Joyce had bargained for. According to Joyce, no part of the property

was to be sold. Thus, the alleged agreement was hopelessly indefinite with regard to how the trust could be funded "for generations to come" without selling some part of the trust property. The problem is not that performance had become impossible; it is that performance had never been possible in the first place.

We conclude, then, that the trial court erred by imposing a constructive or express trust over 2200 Sage Flat and the proceeds of 2260 Sage Flat (including the Idaho house).

The next question is whether we should remand for further proceedings with respect to 2200 and 2260 Sage Flat. Specific performance is a remedy, not a cause of action; it is arguable that, even though plaintiffs are not entitled to specific performance, they are at least entitled to damages.

Two considerations, however, persuade us that no further proceedings are necessary. First, plaintiffs' cause of action for breach of an oral contract is barred by the statute of limitations. This cause of action accrued not later than when Gerald disclosed that Virginia had left everything to him a day or so after Virginia's death on February 21, 2003. The applicable limitations period is two years. (Code Civ. Proc., § 339, subd. 1.) The complaint, however, was not filed until February 16, 2007, nearly four years later.

Second, this cause of action is also barred by plaintiffs' failure to file a creditors' claim in connection with Virginia's estate. (Prob. Code, § 9002, subd. (b); *Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 833-834.)<sup>6</sup>

For reasons that we will discuss in part IV.B and C, *post*, it is at least arguable that, unlike a claim for damages, a valid claim for specific performance would [footnote continued on next page]

We therefore conclude that, to the extent that plaintiffs are asserting a claim to 2200 Sage Flat, 2260 Sage Flat, the proceeds of 2260 Sage Flat, or the Idaho house, Gerald is entitled to the entry of judgment in his favor. We need not discuss Gerald's other contentions regarding these claims.

IV

#### KNOX ACRES

Gerald challenges Joyce's claim to the proceeds of Knox Acres on several grounds. We address these seriatim.

A. Unclean Hands.

First, Gerald contends that Joyce's claim to the proceeds of Knox Acres is barred by unclean hands, because she agreed that the property should be held in Virginia's name for the purpose of defrauding creditors.

Gerald, in his answer, raised unclean hands as an affirmative defense. He also raised unclean hands in his trial brief. The trial court's statement of decision did not expressly address unclean hands. However, by imposing a resulting trust on the proceeds, it implicitly rejected this defense. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.) We must sustain this implied finding if it is supported by substantial

[footnote continued from previous page]

not be barred by either the statute of limitations or failure to file a creditor's claim. However, because plaintiffs are not entitled to specific performance, we need not decide this issue.

evidence. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 510 [Fourth Dist., Div. Two].)

Under a long line of California cases, "'he who executes a conveyance of property for the purpose of hindering, delaying, or defrauding his creditors cannot by any action in equity obtain a reconveyance from his grantee . . . .'" (*Tognazzi v. Wilhelm* (1936) 6 Cal.2d 123, 125; accord, *Samuelson v. Ingraham* (1969) 272 Cal.App.2d 804, 806-807; *Estate of Xydias* (1949) 92 Cal.App.2d 857, 860-861; *Saint v. Saint* (1932) 120 Cal.App. 15, 22.) This is an aspect of the doctrine of unclean hands. (*Estate of Blanco* (1978) 86 Cal.App.3d 826, 830-832.)

Joyce admitted that she intended to defraud creditors of her deceased husband, Ken. Since, as she also testified, both she and Ken were the rightful owners of Knox Acres, Ken's creditors would have had a valid claim to the property. In any event, the unclean hands doctrine could apply even if the creditors she was seeking to defraud were not her own. (*Taylor v. Bank of America* (1944) 67 Cal.App.2d 59, 67-68.)

Before relief will be denied on this ground, however, there must be evidence that some actual creditor existed. *Alaniz v. Casenave* (1891) 91 Cal. 41 is on point. There, the trial court found that plaintiff had conveyed certain real property to her son-in-law so that he could manage it for her. (*Id.* at pp. 44-45.) On appeal, the son-in-law argued that the plaintiff was not entitled to recover the property because she had acted with the intent of defrauding creditors. (*Id.* at p. 47.)

The Supreme Court disagreed. It explained that the plaintiff "feared that some heirs of her father might assert some kind of a claim against her which would compel her, as she says, 'to come and go,' and she did not wish to have the trouble. Thereupon the defendant, her son-in-law and agent, proposed that she convey to him, and he would take the trouble of the defense off her hands. She testifies that she did not fear any claim that her father's heirs might prefer, and that she so stated at the time. There is no evidence that the claims were asserted against her or her property, or could have been. . . . Courts will not allow a trust to be proven by a party to the fraud, if the trust was created for a fraudulent purpose, but before it will deny relief upon that ground, there should be proof that some one was to be defrauded. Here there is no proof of a claim which it was intended to defeat, or that any creditor or claimant of any kind existed." (Alaniz v. Casenave, supra, 91 Cal. at p. 47, italics added.)

Here, identically, Joyce did not know that Ken actually had any creditors who actually had any valid claims. She was simply afraid that he might have a creditor she did not know about, or, alternatively, that someone might falsely claim to be his creditor. She testified: "We were afraid that somebody would crawl out of the woodwork if they saw the Knox [A]cres were up for sale, and someone would come and say, 'Oh, yeah. He owes me a few thousand over here or a few thousand over there.'" There was no evidence that any such creditor actually existed.

We recognize that "the 'unclean hands' principle is equally applicable to cases of intent to defraud as to those in which the intent ripened into accomplishment.

[Citations.]" (*Belling v. Croter* (1943) 57 Cal.App.2d 296, 306.) Even in such cases, however, there has been evidence of *actual* creditors who *could have been* defrauded. (See *id.* at pp. 298-303; see also *Samuelson v. Ingraham*, *supra*, 272 Cal.App.2d at p. 805.)

We therefore conclude that the trial court could properly find that Joyce's claim was not barred by unclean hands.

# B. Statute of Limitations.

Second, Gerald contends that Joyce's claim to the proceeds of Knox Acres is barred by the statute of limitations.

Gerald raised the statute of limitations as an affirmative defense in his answer. His trial brief did not address the statute of limitations. However, plaintiffs' trial brief proactively argued that the statute of limitations was not a bar. Once again (see part IV.A ante), the trial court's statement of decision implicitly but necessarily rejected the statute of limitations as a defense.

Joyce expressly alleged a cause of action for a resulting trust. ""Ordinarily a resulting trust arises in favor of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the title is taken in the name of another. [Citations.] 'The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.' [Citations.]" [Citation.]" (In

re Estate of Yool (2007) 151 Cal.App.4th 867, 874.) Thus, a resulting trust was in fact shown by the evidence.

A cause of action to establish a resulting trust is subject to a four-year statute of limitations. (Code Civ. Proc., § 343; *In re Estate of Yool, supra*, 151 Cal.App.4th at p. 875.) Moreover, the cause of action does not accrue until the beneficiary has knowledge or notice that the trustee has repudiated the trust. (*Kaneda v. Kaneda* (1965) 235 Cal.App.2d 404, 418-420.)

Here, even assuming the cause of action accrued when Virginia died, on February 21, 2003, this action, filed on February 16, 2007, was within the four-year statute of limitations.

Gerald's argument to the contrary is not very clear. He states: "As her [unclean hands] bar her from equitable relief..., the only other theor[y] upon which Joyce might prevail would be an oral contract with Virginia...." (Italics added.) He then argues that an action for breach of an oral contract is time-barred. Thus, he appears to concede that an action for equitable relief (which, as we held in part IV.A, ante, is not barred by unclean hands) was still timely.

### C. Failure to File a Probate Claim.

Finally, Gerald contends that Joyce's claim to the proceeds of Knox Acres is barred by her failure to file a creditor's claim in connection with Virginia's estate.

Gerald did not raise this contention in his answer or in his trial brief. However, the relevant evidence was admitted without objection. Also, his counsel asserted in closing

argument, without objection, that Joyce had failed to comply with the probate claim procedures.

For purposes of the probate claim procedures, a "claim" does not include "a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate." (Prob. Code, § 9000, subd. (b).) Here, Joyce claimed that the proceeds of Knox Acres were rightfully hers. Her failure to file a creditor's claim in the probate proceedings therefore did not bar her from recovering them. (*Gunter v. Janes* (1858) 9 Cal. 643, 658; *Birch v. Ciria* (1962) 205 Cal.App.2d 1, 7-8.)

Indeed, in his reply brief, Gerald concedes this point. He merely argues that unclean hands barred Joyce's equitable claim to the proceeds, and hence she had only a legal claim for damages — e.g., for breach of contract. We have already rejected his unclean hands argument. Hence, we must reject this argument, too.

V

# DISPOSITION

To the extent that the judgment grants plaintiffs relief with respect to 2200 Sage Flat, 2260 Sage Flat, the proceeds of 2260 Sage Flat, or Gerald's house in Idaho, it is reversed. The trial court is directed to enter judgment against plaintiffs on their claims to these items.

To the extent that the judgment grants Joyce relief with respect to the proceeds of Knox Acres, it is affirmed, with the following modification.

At oral argument, plaintiffs contended that, in light of our holding with respect to 2200 and 2260 Sage Flat, Gerald should not be allowed to deduct any expenses incurred for the benefit of 2200 Sage Flat or 2260 Sage Flat, including, but not limited to, the costs of building the garage on 2200 Sage Flat; instead, the entire proceeds of Knox Acres should be awarded to Joyce, with no deductions.

With respect to the costs of building the garage, we disagree. This amount was spent while Virginia was alive, with Joyce's consent and acquiescence. If Joyce wanted to recover these costs — on the theory that she agreed to them on the mistaken belief that Virginia would leave 2200 Sage Flat to her, or on any other theory — she should have raised that claim below. (Then Gerald would have been entitled to oppose it, based on the statute of limitations, on Joyce's failure to file a creditor's claim, or on any other applicable ground.) Admittedly, it was inconsistent with her main claim that the family was entitled to 2200 Sage Flat, including the garage. A party, however, is allowed to litigate inconsistent theories.

With respect to other expenses, however, Gerald's counsel conceded that plaintiffs' argument is well taken, and we agree. Accordingly, the judgment should be modified so as to award Joyce the proceeds of Knox Acres, minus only the expenses of building the garage.

The trial court is directed to enter a new judgment in conformity with this opinion.

Gerald is awarded costs on appeal against plaintiffs.

# NOT TO BE PUBLISHED IN OFFICIAL REPORTS

|                         | RICHLI | J. |
|-------------------------|--------|----|
| We concur:              |        |    |
| HOLLENHORST Acting P.J. |        |    |
| MILLER J.               |        |    |